

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TONY L. WARE and PATRICIA ORTIZ as
Legal Owners and Investors,

Plaintiffs,

v.

WACHOVIA BANK, N.A.,

Defendant.

Civil Action File No.

NOTICE OF REMOVAL TO FEDERAL COURT

**TO: The Honorable Judges of the United States District Court for the
Northern District of Georgia, Atlanta Division**

COMES NOW, Defendant Wells Fargo Bank, National Association, as successor by merger to Wachovia Bank, N.A. ("Wells Fargo"), by and through its undersigned counsel, and respectfully files this Notice of Removal of this action to this Court from the Superior Court of Cobb County, Georgia, where it is now pending, in accordance with 28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446. Wells Fargo supports this removal as follows:

BACKGROUND

1. This lawsuit was filed by Plaintiffs Tony L. Ware and Patricia Ortiz ("Plaintiffs") on or about March 2, 2017, in the Superior Court of Cobb County,

Georgia (Civil Action No. 17-1-1591-53). A copy of the Complaint and all process, pleadings, and orders filed with the Cobb County Superior Court are attached hereto as **Exhibit 1**.

2. Plaintiffs attempted to serve Wachovia Bank, N.A., by personally serving the Georgia Secretary of State on March 2, 2017. (*See* Returns of Service, filed in Cobb County Superior Court on March 6 and 9, 2017.)

3. Plaintiffs also mailed a copy of the complaint and summons by certified mail to "Mr. John G. Stumpf, CEO" at 40 Technology Parkway South, Suite 300, Norcross, GA 30092.

3. Wells Fargo received the mailed copy of the summons and complaint on March 6, 2017.

4. Wells Fargo, as successor by merger to Wachovia Bank, N.A., has filed its notice of removal within 30 days of its receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based (the Complaint). *See Ware v. Fleetboston Fin. Corp.*, 180 F. App'x 59, 63 (11th Cir. 2006) (affirming denial of Plaintiff Tony Ware's motion to remand where defendant corporation, who had previously withdrawn from Georgia, filed removal notice within 30 days of receiving a copy of the summons and complaint).

5. No further proceedings have been filed in the Superior Court of Cobb County, Georgia, with regard to this action.

6. This action is removable to federal court pursuant to 28 U.S.C. § 1441 because it could have been filed originally in this Court pursuant to the jurisdiction conferred by 28 U.S.C. §§ 1331 and 1332.

FEDERAL QUESTION JURISDICTION

7. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Plaintiffs seek relief from violation of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.*, over which this Court has jurisdiction. (*See* Compl., p.9.)

8. This Court also has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because they are joined with Plaintiffs' separate and independent federal cause of action, over which this Court has federal question jurisdiction.

DIVERSITY JURISDICTION

9. This Court also has original jurisdiction over this case pursuant to 28 U.S.C. § 1332 because there is complete diversity between Plaintiffs and Wells Fargo and the amount in controversy exceeds the jurisdictional threshold.

Citizenship of Parties

10. Plaintiffs have addresses in Georgia and allege to be subject to the jurisdiction of the Superior Court of Cobb County. (*See* Compl., ¶¶ 4-5.) Therefore, both Plaintiffs' domicile is within Georgia, and both Plaintiffs are citizens of Georgia.

11. Wells Fargo is a national banking association. For diversity purposes, "a national bank ... is a citizen of the state in which its main office, as set forth in its articles of association, is located." *See Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006). Wells Fargo's main office is located in Sioux Falls, South Dakota. Wells Fargo, therefore, is a citizen of South Dakota.

12. This action, therefore, is a controversy between citizens of different states – Georgia and South Dakota – for purposes of invoking the original jurisdiction of the federal district courts pursuant to 28 U.S.C. § 1332.

Amount in Controversy Exceeds Jurisdictional Threshold

13. Plaintiffs' claim exceeds the \$75,000.00 amount in controversy threshold under 28 U.S.C. § 1332(a) because Plaintiffs seek compensatory relief in the amount of \$3,850,000.00 and statutory relief in the amount of \$470,320.00. (*See* Compl., p.19.)

VENUE

14. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embraces the Superior Court of Cobb County for the State of Georgia, the forum in which the removed action was pending.

NOTICE

15. Notice to the Superior Court of Cobb County, Georgia, which includes a duplicate of this Notice of Removal to Federal Court, is being filed with the Clerk of the Superior Court of Cobb County, State of Georgia as provided by 28 U.S.C. § 1446(d). A copy of this Notice is attached as **Exhibit 2**.

16. Written notice of the filing of this Notice of Removal will be sent to Plaintiffs, the only adverse parties in this action, as provided in 28 U.S.C. § 1446(d). A copy of this notice is attached as **Exhibit 3**.

WHEREFORE, Wells Fargo requests that the above-described action filed against Wells Fargo by Plaintiffs in the Superior Court of Cobb County, Georgia, be removed to this Court.

Respectfully submitted this 31st day of March, 2017.

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*Counsel for Defendant Wells Fargo
Bank, National Association, Inc., as
successor by merger to Wachovia Bank,
N.A.*

CERTIFICATE OF SERVICE

This will certify service of a copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** by the CM/ECF online filing system with the U.S. District Court for the Northern District of Georgia which will automatically send email notification to all counsel of record, and by U.S. Mail upon the following:

Tony L. Ware, *pro se*
P.O. Box 150525-Dept. 0227
Atlanta, Georgia 30315-0188
via U.S. First Class Mail Only

Patricia Ortiz, *pro se*
4287 Highborne Drive, N.E.
Marietta, Georgia 30066-2428
via U.S. First Class Mail Only

This 31st day of March, 2017.

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.**

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